

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION *et al.*,

Defendants.

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION *et al.*,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

Civil Action No. 3:17-01665
Hon. David A. Faber

**DEFENDANTS' RESPONSES TO OBJECTIONS
TO THIRD-PARTY DISCOVERY SHARING**

On October 28, 2020, the Court granted Defendants' Unopposed Motion for Entry of Order Providing for Use of Third-Party Discovery in Related State Court Litigation (ECF No. 1118). The Court's October 28, 2020 order promotes efficiencies by allowing third-party discovery available in this litigation to be deemed produced in the opioid litigation currently pending in the Circuit Court of Kanawha County, West Virginia (the "MLP litigation" or "MLP").¹ Following the processes outlined in the Court's October 28, 2020 order, two third

¹ *In re: Opioid Litigation*, Civil Action No. 19-C-9000, Circuit Court of Kanawha County, West Virginia.

parties have filed objections to the sharing of their discovery in the MLP litigation — the United States Department of Justice (“DOJ”) (ECF No. 1171) and Cigna Corporation (“Cigna”) (ECF No. 1176).

Pursuant to the Court’s recent February 9, 2021 order (ECF No. 1220), Defendants now respond to DOJ’s and Cigna’s objections as follows:

DOJ: DOJ — on behalf of the Drug Enforcement Administration (“DEA”) and the Federal Bureau of Investigation (“FBI”) — objects to sharing its third-party discovery from the MDL Track 1 litigation and this litigation into the MLP unless the MLP parties agree to: (1) sign the federal MDL protective order² acknowledgement form; (2) abide by the requirements of the MDL protective order as to DEA or FBI documents or testimony produced or elicited in the federal litigation; and (3) resolve any disputes arising therefrom in a United States District Court. *See* ECF No. 1171. Defendants agree to the terms that DOJ has set forth in its objection.

Defendants conferred with Plaintiffs in the MLP litigation (the “MLP Plaintiffs”), who advised that they, too, agree that DEA/FBI documents, testimony, and exhibits obtained in this litigation and in the MDL Track 1 litigation may be deemed produced in the MLP litigation, and that such documents, testimony, and exhibits will be governed by the MDL protective order, provided that the MLP parties’ right to take additional third-party discovery in the MLP will not be altered, and provided that any additional third-party discovery sought or taken specifically in the MLP (and any objections to same) will be governed by MLP processes and the MLP protective order — not the MDL protective order. Defendants agree with the MLP Plaintiffs’ position and understand it to be consistent with the conditions proposed by DOJ.

² ECF No. 441 and subsequent amendments, *In re: National Prescription Opiate Litigation*, MDL No. 2804, Case No. 17-MD-2804-DAP (N.D. Ohio).

Cigna: Cigna objects to sharing its third-party discovery with the MLP because “its prior non-party production . . . is not relevant to the claims or defenses asserted in” the MLP since it “was limited to customer-specific claims data for Cuyahoga and Summit Counties in Ohio.” See ECF No. 1176.

Defendants do not oppose Cigna’s objection and will not share Cigna’s Ohio claims data with the parties in the MLP. Likewise, the MLP Plaintiffs have represented that they agree not to use Cigna’s federal third-party documents in the MLP, with the understanding that the MLP parties will retain their right to seek additional/other third-party discovery from Cigna in the MLP. Defendants agree with the MLP Plaintiffs’ position and understand it to be consistent with Cigna’s objection.

* * *

As summarized above, Defendants agree to the terms set forth in DOJ’s objection and do not oppose Cigna’s objection. Defendants request that the Court enter the Proposed Order that accompanies this filing.

Dated: February 19, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 19th day of February, 2021 the foregoing “Defendants’ Responses to Objections to Third-Party Discovery Sharing” was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record, including counsel for DEA, FBI, and Cigna.

/s/ *Timothy C. Hester*
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